

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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M.K.,

Plaintiff,

COMPLAINT

-against-

ARCHDIOCESE OF NEW YORK and CHURCH OF SAINT
MICHAEL,

Index No. _____

Defendants.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, M.K., by and through undersigned counsel, respectfully shows to this Court and alleges as follows:

Introduction

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-g. The Plaintiff, when she was a minor, was sexually assaulted by Father Luiz Antonio De Aguiar, a Priest from Brazil working in the Archdiocese of New York.

Parties, Jurisdiction and Venue

1. Plaintiff M.K. is a citizen or subject of a foreign state.
2. Defendant, Archdiocese of New York (hereafter, the “Archdiocese” or the “Archdiocese of New York”), is a religious institution and organization with principal offices located at 1011 1st Avenue, New York, NY 10022. The Archdiocese of New York controls all Catholic religious, pastoral and educational functions in Westchester, Rockland, and Putnam

counties, along with parts of New York City and the Hudson Valley. The Archdiocese is a citizen and resident of the State of New York.

3. Defendant, Church of Saint Michael, is a Catholic parish and church located at 424 West 34th Street, New York, New York. ("St. Michael" or the "Church"). At all relevant times, St. Michael was owned, controlled and operated by the Archdiocese of New York.

4. Luiz Antonio De Aguiar ("Father De Aguiar") was at all times a duly ordained Catholic Priest.

5. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

6. Personal jurisdiction lies over Defendants as they are present and domiciled in the State of New York.

7. Venue of this action lies in New York County as the Defendant has its principal place of business in New York County.

Duty

8. At all material times, the Archdiocese was in a special relationship with Plaintiff as one of the Catholic faithful with whom one of its Priests working within the Archdiocese, Father De Aguiar, would have contacts in the course of engaging in the activities of a Catholic Priest. Based on this special relationship, the Archdiocese owed Plaintiff a duty of reasonable care to protect her from foreseeable harm.

9. The Archdiocese and Father De Aguiar were in a special relationship of employer-employee or principal-agent, and thus the Archdiocese owed a duty to control Father De Aguiar to prevent foreseeable harm.

10. The Archdiocese owed a duty to Plaintiff to use reasonable care to protect the

safety, care, well-being and health of the Plaintiff while she was under the care, custody or in the presence of Father De Aguiar.

11. The Archdiocese owed a duty to exercise reasonable care in hiring, retention or supervision of Father De Aguiar.

12. The Archdiocese owed a duty in accepting the transfer or reassignment of Father De Aguiar from a parish in Brazil when it knew or should have known that he posed a danger of sexual harm to children in general and/or to M.K. in particular.

Father De Aguiar's Sexual Assaults of Plaintiff

13. Father De Aguiar sexually assaulted M.K. on numerous occasions, beginning when she was 8 or 9 years old in or about 1989, both in Brazil and in New York.

14. After he was ordained, Father De Aguiar was assigned as a priest to the Catholic Church Sao Judas Tadeu in Brazil, in the Diocese of Jundiai. When M.K. was a small child, M.K. and her family were devout Catholics, and active in this church. Father De Aguiar groomed M.K.'s parents and ingratiated himself into her family. He would often visit their house, and gave M.K.'s sister a job as a secretary in the church. He gave special treatment to M.K. and showed her particular interest, among other things, giving M.K. a key to his house. Father De Aguiar sent numerous cards and letters to M.K.'s parents. He sent love letters and notes to M.K. Father Aguiar thereupon began committing compliant sexual assaults of M.K. while he served in the Diocese of Jundiai.

15. Rumors spread in the church community in Brazil concerning the inappropriate relationship between Father De Aguiar and M.K. Bishop Roberto Pinarello de Almeida of the Diocese of Jundiai, attempting to avoid scandal and without explanation, asked M.K.'s parents to move away from the church, which they would not do.

16. Upon information and belief, the Bishop of Jundiai, knowing that Father De Aguiar had been engaging in inappropriate sexual contacts with M.K., had Father De Aguiar transferred and reassigned to the Archdiocese of New York in or about 1993.

17. After moving to New York, Father De Aguiar continued to have frequent contacts with M.K.'s family and M.K., in letters, telephone calls and visits to Brazil. In these contacts he sought to have M.K. come to New York. As a result, in or about 1997, when M.K. was 15 years old, M.K.'s parents, who trusted Father De Aguiar and did not believe he would sexually abuse M.K., acted in accordance with Father De Aguiar's request and sent M.K. with her sister to New York.

18. After Plaintiff arrived in New York, Father De Aguiar sexually assaulted Plaintiff on numerous occasions. At that time, Father De Aguiar was assigned to St. Michael and working for the Archdiocese of New York. His sexual assaults of M.K. continued and occurred in multiple locations, in and around his residences in Manhattan, the rectory where Father De Aguiar lived in Queens, and in trips to Connecticut, Massachusetts, Florida and Colorado. The sexual assaults continued through M.K. turning 18 years old, and ceased in 2001.

19. Father De Aguiar's sexual assaults of M.K. after she came to New York, while she was a minor, included, for example, his kissing her and fondling her breasts, fondling her vagina, putting her hand on his penis, acts of sexual performance, and acts of grinding and frottage. Father De Aguiar also gave M.K. alcohol to make her intoxicated.

Notice – Foreseeability

20. The Archdiocese brought Father De Aguiar to New York to work with a community of Brazilian and Portugese-speaking parishioners that had been established at St. Michael.

21. Upon information and belief, at all relevant times the Archdiocese and the Church knew or should have known of Father De Aguiar's history in the Diocese of Jundiai, which included his sexual misconduct with Plaintiff. Despite this, the Archdiocese and the Church brought Father De Aguiar from Brazil to St. Michael for the specific purpose of providing ministry and pastoral counseling to the Brazilian community in New York. This would subsequently include M.K., who travelled to New York from Brazil when she was 15 years old.

Archdiocese's Concealment of Acts of Sexual Abuse by Priests

22. The Archbishop of the Archdiocese at all relevant times knew that Priests of the Archdiocese, under his supervision and control, were grooming and sexually molesting children with whom the Priests would have contact in their ministry and pastoral functions. At all relevant times, the Bishop knew that this was a widespread, ubiquitous and systemic problem in the Archdiocese, involving many Priests and numerous victims.

23. In or about April of 2019, the Archdiocese released a list of over 120 Priests of the Archdiocese, acknowledging what it deemed credible allegations of child sexual abuse that had been made against the listed Priests. These Priests are acknowledged to have abused children within the Archdiocese of New York over decades.

24. Despite receiving credible allegations of child sexual abuse against Priests, the Archdiocese acted to conceal these allegations in an effort to avoid scandal and accountability.

25. This concealment was in accordance with a policy of the Archdiocese, as agent, and the Holy See, as principal. In 1922, the Holy See released a confidential document to its Bishops and other officials of Catholic organizations regarding the handling of cases of solicitation of sex in the confessional. This document mandated a specific procedure for Holy See's agents, including the Bishop of the Archdiocese, to use when a cleric abused children using the

confessional. This document required strict secrecy. The 1922 document showed that the Holy See and its agents were fully aware that there was a systemic problem of clergy sexually molesting children using the confessional.

26. In 1962, the Holy See released the confidential document, *Instruction on The Manner of Proceeding in Cases of Solicitation* (The Vatican Press, 1962) (hereinafter referred to as "*Crimen Sollicitationis*"). The heading of the document states, "From the Supreme and Holy Congregation of the Holy Office To All Patriarchs, Archbishops, Bishops and Other Diocesan Ordinaries 'Even of the Oriental Rite,'" and contains specific instructions regarding the handling of child sex abuse by clergy. According to the document itself, it is an "instruction, ordering upon those to whom it pertains to keep and observe it in the minutest detail." *Crimen Sollicitationis* at paragraph 24.

27. The 1962 document reinforced that the Holy See and its agents to whom the documents was directed had knowledge that there was a systemic problem of Catholic clergy sexually molesting children using the confessional.

28. At the same time, the Holy See was involved in the formation of secret facilities in the United States where sexually offending clergy would be sent for short periods of time. In 1962-63, Fr. Gerald Fitzgerald reported to the Pope on the problem of abuse of children by clergy and expressed concerns if these priests were returned to active duty.

29. Fr. Fitzgerald's reports were kept secret under the Holy See's standing policy to avoid scandal at all costs. Its recommendation was ignored, however, and instead the Holy See made a choice to return known offending priests to active duty. At this point, it is clear that the Holy See and its agents, including the Archdiocese, knew they had a widespread problem of clergy sexually molesting minors, and they participated in the creation and the operation of facilities in

the United States where sexually offending clergy could be sent before they were moved to another parish to work and potentially abuse again.

30. The Holy See's policy of secrecy under penalty of immediate removal from the organization (excommunication) for all involved in an accusation of child sexual abuse created a shroud of secrecy insulating Priests from consequence. Through this policy and others, the Holy See and its agents, including the Archdiocese, knowingly allowed, permitted and encouraged child sex abuse by the Archdiocese's Priests.

31. The Holy See mandates secrecy for all those involved, including agents and itself, in handling allegations of sexual abuse. Penalties for child sexual abuse include an order to move offending priests to other locations once they have been determined to be "delinquent." In response to allegations, the document mandates that supplementary penalties include: "As often as, in the prudent judgment of the Ordinary, it seems necessary for the amendment of the delinquent, for the removal of the near occasion [of soliciting in the future], or for the prevention of scandal or reparation for it, there should be added a prescription for a prohibition of remaining in a certain place." *Crimen Sollicitations* at paragraph 64. Under this policy of secrecy and transfers or reassignments, all involved are threatened with excommunication and, thus, damnation, if they do not comply.

32. The policy of secrecy and the severest of penalties for its violation were reiterated in documents issued by officials of the Holy See for the benefit of its agents, including the Bishop of the Archdiocese, in 1988 and 2001.

33. The policies and practices of the Archdiocese designed to conceal sexual abuse by clergy and protect it from scandal and liability included the following:

- (a) transfer and reassignment of clergy known or suspected to abuse minors to

deflect attention from reports or allegations of child sexual abuse;

(b) concealing from parishioners and even other clergy that a priest reassigned to their parish posed a danger of sexual abuse to children;

(c) failing to alert parishioners from the Priest's prior assignments that their children were exposed to a known or suspected child molester;

(d) failing to report sexual abuse to criminal authorities; and

(e) otherwise protecting and fostering the interests of abusive clergy to the detriment of the victims and the community, for the purpose of avoiding scandal and public scrutiny.

34. Upon information and belief, the transfers and reassignments of Father De Aguiar were pursuant to this policy and practice designed to conceal sexual abuse of clergy and protect the Archdiocese and other Catholic organizations from scandal.

35. Indeed, the policy of secrecy and lack of consequences for the sexual abuse of children was perceived as a perquisite by clergy sex abusers. The Holy See and Archdiocese believed it to be perceived as a perquisite, which it condoned and used to its advantage in controlling Priests.

36. Plaintiff was in a zone of foreseeable harm when she was in or near the presence of Father De Aguiar.

37. The Archdiocese was in the best position to protect against the risk of harm as it knew of the systemic problem and foreseeable proclivities of its Priests to sexually abuse children.

38. At all relevant times, while the Archdiocese had special and unique knowledge of the risk of child sexual abuse by its Priests, the Catholic community and families trusted Priests, and were led to believe that they were safe around children.

39. The Archdiocese knew a significant percentage of Priests were using their status and position to identify, recruit, groom and sexually assault vulnerable children in the Church.

40. Plaintiff was thus placed at risk of sexual assault by Father De Aguiar.

Breach

41. Upon information and belief, at the time Plaintiff was sexually assaulted by Father De Aguiar in New York, the Archdiocese knew or should have known that Father De Aguiar posed a foreseeable risk of sexual assault to children with whom he would have contacts in his duties and activities as a Catholic Priest.

42. The Archdiocese breached its duties by (i) hiring Father De Aguiar as a priest when it knew or should have known of his perverse sexual proclivities; (ii) at all relevant times, retaining and failing to adequately supervise Father De Aguiar in his contacts with children in general and M.K. in particular, as an active Priest working in the Archdiocese; and (iii) granting and maintaining Father De Aguiar faculties as Priest without making any warning or notice of the risks he posed of child sexual abuse or assault to the Catholic faithful who would have contacts with Father De Aguiar, particularly M.K.

43. At all relevant times, the Archdiocese had inadequate policies and procedures to protect children who would encounter their Catholic Priests in the course of their duties.

44. The Archdiocese concealed its knowledge that priests were unsafe and failed to adopt policies and procedures that would protect children and reduce the risk of child sexual abuse by its Priests.

45. The Archdiocese failed to warn Catholic families that their children were at risk of sexual abuse by Priests.

46. As a direct and proximate cause of the foregoing breaches of duty, Father De Aguiar sexually assaulted Plaintiff.

Nature of Conduct Alleged

47. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral

or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53), and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

48. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendant acted with reckless disregard for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Father De Aguiar, to retain Father De Aguiar in ministry with unfettered access to children.

COUNT I
NEGLIGENCE
(Against Archdiocese)

49. Plaintiff M.K. repeats and realleges Paragraphs 1 through 48 above.

50. As a direct and proximate result of the Archdiocese's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

51. The Archdiocese's acts and conduct shows a reckless or willful disregard for the safety and well-being of M.K. and other children.

WHEREFORE, Plaintiff demands judgment against the Archdiocese for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

COUNT II
NEGLIGENCE
(Against Church)

52. Plaintiff M.K. repeats and realleges Paragraphs 1 through 48 above.

53. As a direct and proximate result of the Church's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

54. The Church's acts and conduct shows a reckless or willful disregard for the safety and well-being of M.K.

WHEREFORE, Plaintiff demands judgment against the Church for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action.

Dated: New York, New York
October 26, 2019

Respectfully submitted,

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